HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A No.5126 of 2003
Date of decision : 4.12.2006.

Daya Nand Dahiya **.....Appellant**

versus

Subash Chand and others **.....Respondents**

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.Deepak Sibal, Advocate for the appellant
Mr.A.P.Bhandari, Advocate for the respondents.

* * *

JUDGMENT

HEMANT GUPTA, J. (Oral)

The defendant is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby the suit for declaration filed by the plaintiffs that they are the owners of the suit land by virtue of sale deed dated 20.6.1972 and that the sale deed dated 23.1.1990, executed by Kanta Parshad in favour of the defendant, will not effect the rights of the plaintirffs, was decreed.

The plaintiff claimed a decree of possession of the land purchased by him vide registered sale deed dated 20.6.1972. The plaintiff also sought a decree for mandatory injunction for directing the defendants to remove the unauthorised construction and malba from the suit property and to hand over the actual physical and vacant possession of the suit property.

Both the Courts below have returned a concurrent finding of fact that vide registered sale deed dated 20.6.1972, Exhibit P-1, the land measuring 400 sq. yards was purchased by Baldev Singh from Kanta Parshad. To prove the sale deed, Kanta Parshad, the vendor, was examined as PW-3. On the other hand, it has been found that the sale deed dated 23.1.1990 could not be effected by Kanta Parshad as he has already conveyed the title in favour of the plaintiffs.

Learned counsel for the appellant has vehemently argued that the appellant is bonafide purchaser for the value and consideration, in view of the fact that he has purchased the suit property after examining the revenue record. Thereafter the appellant raised construction as well. It has been found that since the vendor of the appellant has no title on the suit land, therefore, the appellant cannot derive a valid title on the basis of said sale. In respect of the plea of bonafide purchaser, it has been found that it was incumbent upon the appellant to make an enquiry from the office of the Sub Registrar before getting the Exhibit D-1, sale deed dated 23.1.1990, executed and registered from defendant No.2. Mere consultation from a patwari is not sufficient to hold that the appellant has made due inquiry before the purchase of the suit land.

After hearing learned counsel for the parties, I do not find that any case is made out for interference by this Court in second appeal. The plea of bonafide purchaser is not available to the appellant as his vendor had no title over the suit property at the time of sale. The appellant having failed to take notice of the earlier sale deed in favour of the plaintiffs, cannot be permitted to raise an argument that he is the bonafide purchaser for the value and consideration. Since his vendor has no title

over the suit property, the plea of bonafide purchaser cannot be raised against the plaintiff-respondent.

In view of the above, I do not find any patent illegality or irregularity in the findings recorded by the Courts below which may raise any substantial question of law in the second appeal for consideration of this Court.

Dismissed in limine.

(HEMANT GUPTA)
JUDGE

December 4, 2006
**mohinder*